IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,) Case No. 4:13CR3144
Plaintiff,) Case No. 4.13CR3144
vs.) TENTATIVE) FINDINGS
JAIRO LEMUS–GARCIA,)
Defendant.)

I am in receipt of the presentence investigation report in this case. There is an objection but no departure or variance motion save for a fast-track motion to be made by the government at the time of sentencing.

IT IS ORDERED that:

- (1) The undersigned will consult and follow or deviate from the Guidelines to the extent permitted and required by *United States v. Booker*, 543 U.S. 220(2005) and subsequent cases. In this regard, the undersigned gives notice that, unless otherwise ordered, he will (a) give the advisory Guidelines such weight as they deserve within the context of each individual case and will filter the Guidelines general advice through §3553(a)'s list of factors; (b) resolve all factual disputes relevant to sentencing by the greater weight of the evidence and without the aid of a jury; (c) impose upon the government the burden of proof on all Guideline-enhancements; (d) impose upon the defendant the burden of proof on all Guideline-mitigators; (e) depart from the advisory Guidelines, if appropriate, using pre-Booker departure theory; and (f) in cases where a departure using pre-Booker departure theory is not warranted, deviate or vary from the Guidelines when there is a principled reason for doing so. I no longer give the Guidelines "substantial weight."
- (2) The defendant's objection to the 16-level increase (filing no. 24), relating to a conviction for making a terroristic threat, will be resolved at sentencing. The undersigned gives notice that he is contemplating an upward variance based upon the real offense conduct related to the underlying crime for which the probation officer increased the base offense level by 16.
 - (3) Except to the extent (if at all) that I have sustained an objection or granted a

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motion or reserved an issue for later resolution in the preceding paragraph, the parties are

herewith notified that my tentative findings are that the presentence report is correct in all

respects.

(4) If **any** party wishes to challenge these tentative findings, said party shall, as soon

as possible, but in any event at least five (5) business days before sentencing, file in the court

file and serve upon opposing counsel and the court a motion challenging these tentative

findings, supported by (a) such evidentiary materials as are required (giving due regard to the

requirements of the local rules of practice respecting the submission of evidentiary materials),

(b) a brief as to the law and (c) if an evidentiary hearing is requested, a statement describing

why an evidentiary hearing is necessary and how long such a hearing would take.

(5) Absent submission of the information required by the preceding paragraph of this

order, my tentative findings may become final and the presentence report may be adopted and

relied upon by me without more.

(6) Unless otherwise ordered, any motion challenging these tentative findings shall

be resolved at sentencing.

March 20, 2014.

BY THE COURT:

Richard G. Kopf

Senior United States District Judge

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